(Testimony of Henry Lester Pineda.)

pany and you handed down in the beginning six cases of eggs and that the inspectors made like a bench with those cases to work on right there in the cooler? A. No, I don't know——

Q. All right. You don't know that?

A. I don't think we did that, there.

Q. Isn't it a fact that right in the cooler where a large quantity of eggs were that this bench was made with these cases of eggs and at least one Army man stood on one side and one Army man stood on the other, and that you and Mr. Goddard handed cases over to them with perhaps other physical assistants, and they examined those eggs?

A. They had an Army man there, I don't know, maybe one or two, but he is the man who told us, the chief inspector, I don't know if he took—well, if he wanted to inspect a case or not, but that is why Mr. Goddard got on top and tried to rub his feet, and I did the same, tried to rub our shoes on the wire marks, the old [868] wire marks on these cases. The inspector that was in that room saw this case, you could see any wire marks, he said that you could put that with the other cases, "This will come out."

Q. Isn't it a fact that in that room on that day that those cases were handed down on this bench that was made of egg cases and that one man stood on one side of that bench, and one man on the other, and that they examined the four corners on each side of a case in respect to wire marks and if there were no duplicate wire marks the cases were piled

Testimony of Henry Lester Hinckley

on one pile, and if there were duplicate wire marks they were piled on another? A. No.

Q. Were the cases that had duplicate wire marks piled back with those that had only a single wire mark, if you know? A. Yes.

Q. They were piled back with them?

A. Yes.

Q. Was there any inspection of the cases that you were handling in the cooler, did an Army inspector look at those cases?

A. You mean the contents of the cases?

Q. No, the outside. A. Yes.

Q. There was? A. Yes.

Q. Was that in the cooler? A. Yes.

Q. Will you describe what that inspection was by the Army people inside the cooler while you and **Mr. Goddard** were working in the cooler?

A. You mean did they look for wire marks?

Q. The cases were wired, weren't they?

A. Yes. [869]

Q. They were looking to see whether any of the cases had been wired, had wire marks on, other than the ones covered by the wire that was already there? A. Yes, that's right.

Q. Will you describe what the inspector did in looking for the wire marks?

A. He just took, just looked and seen if it had any marks, he didn't turn them around, or anything. Usually, if you wire a case of eggs it will leave a mark. It will be always two marks all around—it will mark all four corners. Usually

(Testimony of Henry Lester Pineda.)

they look at the top and if they didn't have any that was all.

Q. How many men handled the cases when they were making the inspection for the wire marks?

A. I don't recall whether one or more, but I know there was one man there, because one man told us whether the head inspector wanted the case of eggs. If not, we put it back with the good cases, supposed to be good cases.

Q. After they made the inspection where did they pile the cases that apparently the wiring was satisfactory to the Army inspector, what did they do with those cases?

A. They gave them a certain spot where they could start stacking those cases.

Q. After they had passes the cases what did they do with the cases that did not pass the wire inspection?

A. They were brought to this head inspector and he examined the contents of the cases.

Mr. Faulkner: May I have the answer read?

The Court: Answer read by the reporter.

(Answer read by the reporter.)

Mr. Faulkner: Q. Was that done in your presence?

A. Not all of it, no.

Q. Did you observe any Army inspector examining the contents of any cases of eggs in that cooler room? A. No.

Q. Then whether he did or not you don't know of your own knowledge, is that correct?

(Testimony of Henry Lester Pineda.)

A. No.

Q. Did I understand you to say that you were standing on top of these cases that were piled to the ceiling and that you were doing something to the cases with your foot?

A. I wasn't standing on top of the cases that went as far as the ceiling, I couldn't get on top.

Q. How large was this cooler?

A. I couldn't tell you how large the cooler is down there.

Q. I mean this room where you were working, how large was it? A. I don't recall how large.

Q. Was it as large as this room?

A. I couldn't tell you how large.

Q. You were there on the entire afternoon?

A. I know, but you can't tell—I don't know how many cases were piled in there. I don't know what else was piled there besides eggs. I couldn't tell you exactly how large it was; I don't recall.

Q. Give us some idea of the size of the cooler.

A. I have no idea. [871]

Q. Was it larger than the chair you are sitting in? A. Yes.

Q. Was it larger than this courtroom?

A. I don't know.

Q. Now, as cases that were piled to the ceiling were handed down to you—is that right?

A. Yes.

Q. Will you describe to me what you did to those cases?

(Testimony of Henry Lester Pineda.)

A. I just placed them for the Army man, he could get it.

Q. Someone else would hand a case to you, is that right?

A. Yes; Ruby Goddard would hand it to me. Sometimes I would get up there on top of that pile and hand them to him.

Q. When Ruby Goddard handed the eggs to you you in turn would hand them to an Army man?

A. Yes. I would place it there for the Army man to look at.

Q. Did you do anything with a case of any kind from the time that it was handed to you until you handed it to the Army man?

A. From the time I was next to the Army man—well, if I got on top of the pile——

Q. When Mr. Goddard handed you a case and you handed it to the Army man, did you do anything to the case? A. No.

Q. Except hand it to him?

A. That's right.

Q. Is that right? A. Right.

Q. If you were on top of the pile—What do you mean by that?

A. Well, we would take turns. One man can't be doing the same work all the time. Some work is always easier than the other. We take turns.

Q. Then you would be up on top of the pile?

A. Yes. [872]

Q. How high was the pile?

(Testimony of Henry Lester Pineda.)

A. Oh, it wasn't—about four feet from the top, I would say, from the ceiling.

Q. How high was the ceiling?

A. I don't know.

Q. Was it as high as this room? A. No.

Q. Was it as high as the top of the marble right over your head?

A. I don't recall how high it was.

Q. When you were standing on top of this pile, how far above the ground were you?

A. Well, the first pile would be about four cases from the ground, then we have like a little ladder so we could go up there and make it easier to pull them down.

Q. You would pull those cases down, is that right? A. Yes.

Q. Well, the cases you were pulling down you were pulling from above your feet?—

A. If they were that high we would pull them down and put them on the ground, I mean right on top of the first pile. Then we would stand on them and get the others. You could go up there and pull a case of eggs like this. There was no sense reaching all the way up, you could get it from here (indicating).

Q. Would you then bring them out to the edge so you could move them down, you had to move the case down?

A. Take the case down, we would make a little place there, and we have to stand there. It was our purpose to use them to stand on and rub some of

(Testimony of Henry Lester Pineda.)

these markings out. Then we would give the inspector some of those. In the meantime, whoever was down there would be taking some of these cases that were coming to [873] the inspector and give him some to sort of keep them occupied so whoever was on top could be walking all over the cases of eggs.

Q. These cases, you have seen them wire cases?

A. Yes; I have wired them, myself.

Q. It is wired by a machine? A. Yes.

Q. Correct? A. Correct.

Q. Were these wooden cases or cartons?

A. Wooden.

Q. The thing that the Army people were looking for was cases where they would have the appearance that another wire had been put around the box, is that right? A. That's right.

Q. An egg case would be about how wide?

A. Oh, I don't know; about a foot, I guess; maybe a little wider than a foot.

Q. Well, say eighteen inches. I will find out. We will get an actual case and make the exact measurement later. Were these new cases? A. Yes.

Q. As I understand, when you were moving these cases you had a man down below and had an Army inspector in turn, and you with your shoes were trying to efface wire marks on the wooden cases that were piled up there?

A. That is not what I said. I said we had these wired ones, we put them down so we could make out we were trying to climb on these to get to the top. In the meantime, the man on the ground, or the two

(Testimony of Henry Lester Pineda.)

of us, would give the inspector some of the ones from the bottom. Then when he was ready for it we just reached over and grabbed [874] the ones we had been standing on and give him some of those. In the meantime we would get some more and put down there in that way—this was the easiest thing to do, if we were going to hand them down, would be to place them down there where we would all be able to dirty up the case of eggs.

Q. Assuming this was the case of eggs. This case of eggs would be wired on each half, wouldn't it?

A. Yes.

Q. The indentions, if there were any, of those prior wires would be on eight corners, isn't that correct? A. Yes.

Q. Would there be an indentation across the top if the case had been wired before?

A. Sometimes there would be.

Q. In other words, then there were one, two, three, four places where a mark would be made if the case had been wired before or if the wire on the case had slipped? A. Yes.

Q. Just show me how you would rub those marks off with your shoes.

A. You get up on top and just turn like this. We would not try to get the whole top unless we could; either the two in front or the two in back. Then we would give them to the inspector and he would look at them. If there wasn't a mark in one section he would figure there wouldn't be any in the other place,

(Testimony of Henry Lester Pineda.)

so he would not have to examine the whole case, but we made it as clean as we could.

Q. What did you do to get him to make the inspection the way you wanted it done?

A. If there was some case there that we saw that didn't have any wiring from the original case we would give them to them. While he was looking at the marks [875] we would turn the case around. So we kept turning the case around to see there were no marks. He would let some go, and some he wouldn't.

Q. Assuming you are the man passing the cases to the inspector and Mr. Goddard is the man handing the cases to you. A. Yes.

Q. Mr. Goddard would be up on these cases that were piled close to the ceiling? A. Yes.

Q. Will you describe how Mr. Goddard, up on this pile close to the ceiling, could get on top of any of those cases?

A. Mr. Goddard is handing the cases down from about where he is bringing them down and handing them down, and the case is a good case, he knows that, and there is no chance of him watching or finding any marks, and in the meantime when we did that we kept pulling the top ones down. The pack will be cleaned out by us and the man coming down would have to slide the case.

Q. What was Mr. Nix doing all the time?

A. I believe sometimes he was helping us there for a while, and I believe he used to go and help the

(Testimony of Henry Lester Pineda.)

inspectors, the one examining the contents of the cases. I believe he was opening.

Q. Did you see him doing that?

A. Yes. I saw him take them out when it used to get so cold there, we would go out to get some warm air. Then we would see Jimmy Nix with the inspectors.

Q. If you scuffed the mark of that wire with your shoes the [876] mark would always leave an indentation——

A. I know, yes, but any time eggs—you are bound to stand on a case of eggs, I mean because they are eggs don't mean nobody stands on them or don't stand on them.

Q. But you have a little corner here that has a faint mark of a wire? A. Yes.

Q. If you start scuffing that with your shoes——

A. We don't just mark the whole corner; we are walking over the cover as far as we can.

Q. You could walk on a case of eggs so you could eradicate or eliminate the wire marks on the——

A. To a certain extent, yes. The case was not so—we already had some eggs there that were rejected. When I got there about twelve he was really burned up, he was arguing about how he had found these bad eggs in the cases. He had some more to inspect, and Goddard told this man, "If you are going to examine all the eggs we will stay here all the week-end."

Q. Isn't it a fact a number of cases of eggs in that cooler room was handled by you and Mr. God-

(Testimony of Henry Lester Pineda.)

dard and two Army men in the afternoon while you were there?

A. I would say not the cases in that room, the cases in that lot.

Q. Every case of the lot of these eggs were handled by you and Mr. Goddard and the two Army men right in the cooler?

A. Not necessarily, because that lot was already started when I got there, and I said before that lot was already started. [877]

Q. Who had done the initial work on that lot?

A. I can't tell you, but to all appearances Mr. Berman and Mr. Barfield, I don't know who else was there, somebody was there, they must have done it. I didn't see who done it.

Q. In the cooler that you went into, did you find any Nye & Nissen cases of eggs which were added to the cases you took off or Mr. Goddard took off of the lot of eggs that you worked on? A. Yes.

Q. Observing the quantity that you worked on and the other quantity, how many cases do you think were involved in this whole transaction on that afternoon? A. Well, I would say about 1000.

Q. Your recollection is that about 125 cases were set aside? A. 125 or 150, from 125 to 150.

Q. Did you count them?

A. No, but I recall Tommy picked them up the next day, or the morning, Monday, I think it was, and when he brought them back the girls had to examine them. As I recall, I think it was 125.

Q. In other words, it is merely your best recol-

(Testimony of Henry Lester Pineda.)

lection of the number of cases of eggs you saw piled up, both down there and in the plant?

A. No. I helped Tom unload those cases of eggs.

Q. Who is Tom? A. Tom Andrade.

Q. Is he a friend of yours? A. Yes, he is.

Q. A very close friend, is he not?

A. No, not a close friend, [878] just a fellow that worked there and I worked with him.

Q. You talked to Tom many times about this case, haven't you?

A. No, I have not talked to him many times.

Q. How many times have you talked to Mr. Andrade about your testimony in this case?

A. What I said and everything else?

Q. What you were going to say.

A. What I was going to say, I didn't tell him.

Q. You never told him?

A. No, I didn't tell him what I was going to say because I didn't know what questions you are going to ask me. How would I know what I was going to say?

Q. I don't mean the questions I was going to ask you. The questions Mr. Hippeli was going to ask you, didn't you ever discuss that with Mr. Andrade?

A. I saw him, I mean I was up in here, in this building, here, I don't know whether I talked to him about it, or not. We did talk something about this case coming up, yes.

Q. Didn't you talk about the testimony, you and Mr. Andrade talk about your testimony together in

(Testimony of Henry Lester Pineda.)

the office of the United States Attorney, or, rather the Attorney General?

Mr. Hippeli: Objected to as immaterial and not proper cross-examination.

The Court: He may state whether or not he discussed it.

A. Well, Mr. Andrade was asked some questions while I was in [879] his presence, but I didn't tell him what to say, and he didn't tell me what to say.

Mr. Faulkner:

Q. You were both asked questions in the presence of each other, isn't that right?

A. Tom was asked in my presence.

Q. Were you asked questions in Tom's presence?

A. No, I don't believe I was.

Q. You testified you had been in this building four or five times other than during the period that this trial has been on. A. Yes.

Q. How many times have you gone to 111 Sutter Street to give some information to the FBI?

A. I have never gone to 111 Sutter Street.

Q. When was the first time that you were interviewed in relation to this case by a Department of Justice agent, Mr. Pineda?

A. I would say, I am not sure, but I would say some time in 1943.

Q. 1943? A. Some time, or 1944.

Q. Did you go to see the Department of Justice Agents in 1943 with Tom Andrade? A. No.

Q. Did they come to see you?

A. You mean——

(Testimony of Henry Lester Pineda.)

Q. The FBI agents? A. With Tom?

Q. No. Did an FBI agent come to see you?

A. Yes.

Q. Where? A. At my home.

Q. At your home? A. Yes.

Q. Did they come to see you later, after that, in 1944, or 1945? [880]

A. Yes, yes, they did.

Q. What was the interval between the first time an FBI agent talked to you and the second time?

A. I don't recall, but the first time we talked, the first day, not very much about it, then I was interviewed again, I mean I was talked to, and had a conversation about the second time, but it was a matter of a year, I guess it was; I don't recall. I was interviewed twice close together.

Q. In 1943?

A. Either 1943, I mean it was 1943.

Q. Then about a year went by and you were interviewed again?

A. Yes, to the best of my recollection.

Q. Did you testify before the grand jury?

Mr. Pratt: I object to that, your Honor——

Mr. Faulkner: I am not asking what he said.

The Court: He may state whether or not he did.

A. Yes.

Mr. Faulkner: Q. Now, Mr. Pineda, at any time when you were interviewed by the FBI agents were you told that they knew all about the manner in which Nye & Nissen conducted their business, and that if you wanted to save yourself from going to

(Testimony of Henry Lester Pineda.)

jail you better tell them everything you knew about it?

A. Yes. They told me they knew how Nye & Nissen ran their business, but they didn't tell me about going to jail.

Q. In other words, in the interview that you had with the FBI they described to you certain things, did they not?

A. No. I described to them certain things.

Q. In any of your interviews, did they tell you you were going to jail if you did not help them?

A. No. I don't recall they ever did.

Q. In other words, did you tell while this case was on an employee of Nye & Nissen that the only reason you were testifying was that the FBI had told you if you did not help them you are going to jail?

A. I didn't say, they told me. I said probably I would land in jail if I didn't testify, but I didn't say the FBI told me.

Q. But you did have a conversation in which the thought of jail and giving testimony were mentioned, did you? Isn't that right? A. Yes.

Mr. Hippeli: Conversation with whom?

Mr. Faulkner: With an employee of Nye & Nissen.

A. I don't know about an employee. I know I told my wife, because she doesn't like the idea of me coming here. I guess I told everyone I knew.

Q. I didn't ask you anything about what you told your wife.

A. Well, you are only talking about—who is the

(Testimony of Henry Lester Pineda.)

employee? If you will mention the person I can know about it.'

Q. Didn't you have a conversation—did you have a conversation regarding this case with anybody, regardless of their name? A. Yes.

Q. In which you told them that the reason that you were testifying [882] was that you were told by the FBI that if you did not testify you would go to jail? A. No.

Q. All right. Now, then, in the various conversations that you had with members of the FBI and with the lawyers of the Government was the matter of whether you were to be indicted ever discussed?

A. What do you mean by "indicted"?

Q. Well, Mr. Moncharsh is indicted, Mr. Goddard is indicted, Mr. Menges is indicted.

A. You mean if I was going to be on their side?

Q. Whether you were going to be charged with a criminal offense? A. No.

Q. Was not mentioned?

A. Not that I can remember.

Q. Do you know now in relation to all the things that you have testified to here which you observed why you were not indicted in this case?

A. No.

Mr. Pratt: I object to that.

The Court: Sustained.

Mr. Faulkner: Q. Did anyone tell you before you went before the grand jury that if you testified for the Government that you would not be indicted?

A. Not that I can remember. I still don't know

(Testimony of Henry Lester Pineda.)

if I am going to jail or not. I don't know if I can——

Mr. Faulkner: I object to the witness volunteering in that manner, your Honor. I asked him a question and he answers it, and then he keeps—— [883]

The Court: Read the question and the answer.

(The record was read.)

The Court: Let the question and answer stand.

Mr. Faulkner: Exception.

Q. How many times did you go before the Grand Jury? A. Twice, I believe.

Q. The first time that you went, how long were you in the Grand Jury room?

Mr. Pratt: I object to that.

Mr. Faulkner: I don't want to know anything he said. I want to know how long he was in the room.

The Court: Sustained.

Mr. Faulkner: Exception.

Q. Before you went into the grand jury room, did anyone tell you from the Department of Justice, either of these agents sitting here or any lawyers in this case, that you were not to be indicted?

A. I don't know whether they told me, or not, because I don't know what the word "indicted" means.

Q. Do you know what it means now?

A. According to what I see, I would be——

Q. Well, when you went into the grand jury room did you sign a waiver of immunity? [884]

Mr. Pratt: I object to that, if the Court please.

(Testimony of Henry Lester Pineda.)

The question is whether he signed a waiver of immunity. I do not think that is a proper subject of cross-examination.

The Court: Sustained.

Mr. Faulkner: Exception.

Q. Did an FBI agent or an attorney for the Government give you a paper to sign before you went before the Grand Jury?

Mr. Pratt: That I object to.

Mr. Faulkner: If your Honor please——

The Court: He may answer. The objection is overruled.

A. I do not recall signing the paper before going into the jury-room.

The Court: Q. You do not? A. No.

Mr. Faulkner: Q. On either occasion?

A. No. I don't remember signing any paper before going to the Grand Jury room—in other words, whether I would be put in jail or not. Like I say, I still don't know whether I can go to jail or not, which is the truth.

Mr. Faulkner: Q. You still have in your mind that you might be indicted later?

A. You mean will I be punished for what I have done?

Q. No, you know what I mean.

Mr. Pratt: I object to that.

The Court: Let it go out and the jury will disregard it.

Mr. Faulkner: May the voluntary statement of the witness go out also? [885]

(Testimony of Henry Lester Pineda.)

The Court: Read it.

(Record read.)

The Court: It may go out.

Mr. Faulkner: Q. In this incident in the cold storage plant, Mr. Pineda, there was a conversation; did you hear any conversation between Mr. Smith and anybody present in that cold storage plant on this day? Yes or no, please.

A. Yes.

Q. Who was present at the conversation?

A. Mr. Goddard, I guess, and I believe—I don't know who else. I just happened to hear Mr. Smith talking to, I believe it was, a lieutenant.

Mr. Faulkner: Your Honor, I asked the witness who was present. I am entitled to an answer to that.

The Court: Q. State who was present.

A. Mr. Goddard, Mr. Smith and this—I would say lieutenant—this inspector, and I don't know who else. We had some more there, but I don't recall them.

Mr. Faulkner: Q. But you do remember a lieutenant, Mr. Goddard, Mr. Smith and yourself. Now, state that conversation to me that occurred between those four people, Mr. Pineda, Mr. Goddard, Mr. Smith and the lieutenant?

A. I didn't say we talked to each other. I said Mr. Smith talked to this inspector while in the presence of Mr. Goddard and myself.

Q. I want you to give me that conversation?

(Testimony of Henry Lester Pineda.)

A. Well, the inspector asked Mr. Smith, "Can you explain how these eggs got into these cases?" Mr. Smith said he had no explanation [886] whatsoever. The only remedy he knew of was to replace every case of eggs that the inspector rejected. I believe the conversation ran along that line. I don't recall anything else, but that is what they were talking about.

Q. Is that your best recollection of that conversation? A. Yes.

Q. Were you present at any other conversation in the Merchants Ice & Cold Storage Company on that afternoon in which Mr. Smith participated?

A. Yes.

Q. Who was present at that conversation?

A. Mr. Goddard, Mr. Smith, myself and—we had some more present, but I don't recall who they were. I believe Tommy was there, Mr. Andrade.

Q. When did he get down there?

A. While we were working he came down there, because I believe he usually finished about two-thirty in the afternoon every Saturday—I believe his time was pretty close to three o'clock time, but I believe he was sent down, too.

Q. Have you a distinct recollection of Mr. Smith having a conversation in your presence, Andrade's presence—— A. I am not sure of Tommy.

Q. You are not sure of him? A. No.

Q. And Mr. Goddard?

A. Yes, and Mr. Nix.

Q. What was said on that occasion?

(Testimony of Henry Lester Pineda.)

A. That was right after the inspector had examined these cases of eggs. He was trying to get this man in charge of this plant——

Mr. Faulkner: We ask that that all go out, your Honor. [887] I asked him what the conversation is.

The Witness: The conversation is with this man in charge of the plant.

Mr. Faulkner: Your Honor, I ask the Court to direct the witness to answer the question, and I move that everything stated so far be stricken.

The Court: Q. State the conversation as near as you can that occurred at that time.

Mr. Faulkner: Your Honor, may I have what has thus far been said by the witness stricken from the record as not responsive to the question?

The Court: Read the question and answer.

(Question and answer read.)

Mr. Faulkner: The answer that was given I move to strike.

The Court: Read the answer.

(Answer read.)

Mr. Faulkner: I ask that that all go out.

The Court: It may go out. Proceed.

Mr. Pratt: Just a minute. Is there a question pending?

Mr. Faulkner: Yes. State the conversation.

A. Jack Smith asked the man in charge of the plant if it was all right for him to replace these eggs without any bill showing that those cases were

(Testimony of Henry Lester Pineda.)

removed from this cooler and new cases replaced, and this man said if they were taken that day they would have to be—and I still think—he wasn't sure [888] whether they were taken Monday and replaced Monday or whether they had to have a bill showing that those cases were out or not.

Q. Was the conversation relating to a single case of eggs or a group of the cases of eggs?

A. A group of cases that the inspector had rejected.

Q. In other words, it was not conversation in which Mr. Smith wanted to replace a case of eggs? A. No.

Q. If you said that, it would be in error?

A. If I said a case, yes.

Q. In other words, was the conversation, Mr. Pineda, with Mr. Smith that you related between an official of the ice company?

A. Yes, whoever had charge. The man—I believe the ice house only worked a half a day and they had this man in charge—maybe for us—I don't know—but this man had charge of the plant.

Q. There was an additional man present, a man from the ice house?

A. Yes, but he didn't stay with us when we were inspecting the eggs. He was in the plant.

Q. I asked you about another conversation with Mr. Smith and you said that Mr. Andrade may have been there but you were there and Mr. Goldang was there and Mr. Smith was there. Now, that conversation was between Mr. Smith and some-

(Testimony of Henry Lester Pineda.)

one from the ice plant, so that man must have been there?

A. That is what I tried to tell you first and you stopped me. [889]

Q. What is his name?

A. I don't know his name.

Q. But he was an ice plant employee and not an Army man, is that right?

A. That is right.

Q. And the conversation related to the method of taking out the cases of eggs, that it was agreed by Mr. Smith that the *Army* should be taken out, is that correct? A. That is right.

Q. And it related to the matter of—was it a charge for the storage or what?

A. Well, according to what this man said, any case that left that plant he would have to show on his bill how many cases went out, on his chart or whatever he has there, to show how many cases went out. Mr. Smith didn't know that. He wanted us to replace these cases of eggs without any booking or showing that those cases had been replaced.

Q. Is that what he said to this ice house man?

A. Yes—well, he was trying to find out if there would be any way possible that that could be done. I happened to be standing outside. Like I say, I was getting warmed up. I didn't stay too close to them, but I could hear them talking about it.

Q. Did you go back to that ice plant on that day? A. No.

(Testimony of Henry Lester Pineda.)

Q. Or on any other day thereafter within a week or a month? A. No.

Q. Have you ever been back there since?

A. I may have, but I don't recall.

Q. Have you ever on any other occasion than the one that you have described this morning been down there with Mr. Goddard [890] and Mr. Smith when the Army were inspecting cases for markings from wiring? A. No.

Q. That was the only occasion is that right?

A. That is right.

Q. Mr. Pineda, you have described an operation called buffing stamps? A. Yes.

Q. What do you mean, buffing a stamp?

A. Buffing a stamp would be scraping the stamp off a case of eggs.

Q. Now, the stamps scraped would be an inspection stamp, is that correct? A. Yes.

Q. And there was a special instrument which was referred to as a buffer? A. Yes.

Q. In the Nye & Nissen plant on Townsend Street, is that it?

A. Yes, that is one of the ways we scrape them, with a buffer.

Q. That is the easiest way, isn't it, with a buffer? A. Yes, it is quicker.

Q. Would you describe a buffer?

A. A buffer is like a drill, but it's got like a sandpaper at the end of it.

Q. A what? A. Sandpaper.

Q. A sandpaper?

(Testimony of Henry Lester Pineda.)

A. Yes, you know, sandpaper at the end.

Q. Is it sandpaper or a blade?

A. No, sandpaper like a little piece of sandpaper, about this large (indicating), that we insert on top of this round disk.

Q. Would you use that on the wooden part of the cases? A. Yes, sir, wooden and label, wherever the mark was.

Q. In other words, Mr. Pineda, if a stamp similar to U. S. [891] Exhibit No. 34—I do not mean identical, but similar—or this smaller stamp—you saw it the other day——

A. Yes, Department of Agriculture.

Q. Those stamps would appear on the wood part of the case or they would appear upon the labels, is that correct? A. Yes.

Q. And they would be removed by this so-called buffer? A. Yes.

Q. The buffer, I suppose, would take all the paper off when you have a label, is that right?

A. No, it would just take about two inches around where this—except where the label is sort of coming out from the side of the case, we would take it off with our hands.

Q. That was used many times, was it not?

A. Yes.

Q. You are not the only one who used the buffer?

A. No.

Q. In other words, anyone who happened to be a floor man might be buffing the stamps off

(Testimony of Henry Lester Pineda,)

cases of eggs, isn't that right, if he was asked to do it? A. Yes.

Q. That is correct, isn't it?

A. That is right.

Q. Now, you referred to Colonel Foster as a man who was there on occasions when certain cases of eggs were inspected. Will you describe the Colonel for me, please? What did he look like?

A. Oh, he was close to—I guess close to sixty. He was a pretty well built man, strong. Most of the time he wore these riding boots. He used them a lot of times. He used to do his work with them, too. Sort of had grayish hair, sort of reddish complexion. [892]

Q. Did he have yellow gloves?

A. I don't recall. He was always well dressed. He had everything. He was always well dressed, that man.

Q. A well dressed man?

A. Yes, Army uniform.

Q. Was he a full colonel or a lieutenant-colonel?

A. I don't recall. I don't know what insignia you had to have to be a colonel. It was Colonel Foster this and Colonel Foster that. I took it for granted he was a colonel.

Q. Did he wear a uniform? A. Yes.

Q. He wore an Army uniform, is that right?

A. Yes.

Q. When was the last time you saw the colonel, Mr. Pineda?

(Testimony of Henry Lester Pineda.)

A. I don't recall the last time I saw him. It was at the old plant.

Q. On Townsend Street?

A. On Townsend Street.

Q. Did you ever in your life see Colonel Foster in a candling room on Townsend Street?

A. Yes.

Q. How many times?

A. I saw him nearly every time he came down there, I saw him in the candling room.

Q. Give me the number of times that you have personally seen Colonel Foster down in the Townsend Street plant in the candling room?

A. Well, every time I was on the bench I saw him in the candling room.

Q. Would that be every day? A. No.

Q. Would it be five times a year?

A. No—well, about twenty-five times, I guess, a year. [893]

Q. In a year? A. Yes.

Q. And for how many years did you see him?

A. I would say about three years or so.

Q. So that in a period of three years would it be fair to state that you saw Colonel Foster in the candling room of the plant of Nye & Nissen seventy-five times in the three-year period?

A. When we were busy we would see him often. I don't know how often he came the first year. He might have come at the end of every year or so. I used to see him, say, within a year's time, from January to December, around twenty-five times.

(Testimony of Henry Lester Pineda.)

Q. How many times did you ever see Colonel Foster in the presence of Mr. Menges, who sits there right back of Mr. Sullivan?

A. You mean alongside of him or Mr. Menges present——

Q. In the same vicinity with him, right near the candling room. Withdraw that. Mr. Menges was in charge of the candling room? A. Yes.

Q. How many times in the period that you saw Colonel Foster going in and out of that plant did you ever see him in the candling room or in front of the candling room where Mr. Menges was?

A. Nearly every time.

Q. Did he always wear a uniform?

A. As far as I recall, yes.

Q. Is it not a fact, Mr. Pineda, that Colonel Foster never went into the plant of Nye & Nissen in his life wearing a uniform?

A. He never went to Nye & Nissen?

Q. Yes, never went into the plant of Nye & Nissen in his life in [894] a uniform?

A. That is not true. I mean he may have come a few times but not as I recall. He wore a uniform all the time.

Q. Did he ever come into the plant of Nye & Nissen with the present colonel as his assistant, as a lieutenant?

A. I don't remember. I don't recall Lieutenant Hand so well at the beginning.

Q. You recall him pretty well now, don't you?

A. Oh, yes.

(Testimony of Henry Lester Pineda.)

Q. I mean you have talked with him in the anteroom. You have seen him right in front of you while you have been testifying; you know him now? A. Yes.

Q. Now, visualize the man you see there now and I will ask you how many times did you ever see him come into the plant of Nye & Nissen with Colonel Foster?

A. I am sorry, I can't answer that. I don't remember whether he ever did or not.

Q. Was there ever an occasion when Colonel Foster ever came into the plant of Nye & Nissen that he was not accompanied by a junior officer?

A. I believe he always had someone with him.

Q. He always had at least a driver, didn't he?

A. At least a driver, but the drivers didn't always come in.

Q. The Colonel used to come in in style. He had more people with him than when Colonel Hand came in?

A. I saw him come in with four or five people at a time.

Q. Always well dressed and with the boots and sometimes with yellow *clothes* is that right?

A. Yes, he was always well [895] dressed.

Q. Do you remember a particular incident in which there were several hundred cases of eggs which were submitted to Colonel Foster for inspection some time described by you as 1941 on one day and 1942 on another? Do you remember that incident? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. Which date is the correct date? 1941 or 1942?

A. 1941.

Q. What month is correct? What is the correct month of that incident that you first described when you were telling about Colonel Foster coming in there to inspect some eggs? What is the month?

A. I would say about spring.

Q. Then the incident that you described in the first part of your direct examination relating to an inspection of eggs by Colonel Foster, the first inspection that you referred to, your best recollection is that it was in the spring of 1941?

A. Yes, but I remember Colonel Foster more or less in 1939 or so before Mr. Hand came in.

The Court: The jurors may be excused. Return at two o'clock this afternoon. Keep in mind the admonition of the Court.

(Thereupon a recess was taken until 2:00 o'clock p.m.) [896]

Afternoon Session, January 29, 1946, 2 p.m.

The Court: Waive the roll call, stipulating and agreeing all the jurors are present and seated in the box?

Mr. Faulkner: Yes.

The Court: You may proceed.

HENRY LESTER PINEDA,

recalled.

Cross-Examination—(Resumed)

Mr. Faulkner: Q. Now, you remember an incident in 1941 which, I think you testified this morning, occurred in the spring of 1941 in respect to a quantity of eggs. I am referring, Mr. Pineda, to an incident in which you had a conversation with Mr. Menges, Mr. Goddard, and Mr. Moncharsh. Do you remember that incident?

A. What did we talk about?

Q. The incident that you referred to this morning as the spring of 1941.

The Court: Fix the time and place.

Mr. Faulkner: I can only do it the way he did it, your Honor. That is the difficulty.

The Court: Where was the conversation?

Mr. Faulkner: In the plant of Nye & Nissen on Townsend Street.

The Witness: Well, where—I mean I have talked about talked to them at the end of the bench and—— [897]

Mr. Faulkner: I ask he be instructed——

The Court: Do you remember the incident?

(Testimony of Henry Lester Pineda.)

The Witness: I have heard them talk a lot of times. If I knew where this was, or what did I say, I could bring it out. I worked there all the year 1941. I heard all those men talking that year.

The Court: Yes.

Mr. Faulkner: Q. Do you remember an incident in the year 1941 that you referred to this morning as an incident occurring in the spring of 1941, relating to eggs? Do you remember that incident?

A. I don't know what incident you are talking about.

Q. Do you remember an incident that you referred to in your direct examination as an incident that occurred in the summer of 1942, and you stated that that incident occurred in the summer of 1942, at which you and Mr. Goddard and Mr. Nix were present, and then a recess occurred, and your attention was directed to the fact that Mr. Nix was not in the employ of Nye & Nissen in the summer of 1942, and you then came back on the witness stand and referred to the same incident as one which occurred in 1941. Do you remember that incident?

Mr. Hippeli: I object to that question as assuming something not in evidence.

Mr. Faulkner: What part?

Mr. Hippeli: That during the recess his attention was directed [898] to the supposed fact that Mr. Nix was not present in the summer of 1942.

Mr. Faulkner: Withdraw the question in that form.

(Testimony of Henry Lester Pineda.)

Q. After you testified on the first day that you were examined do you recall testifying to an incident that occurred in the summer of 1942, in which Mr. Nix was present?

A. Yes. I said 1942——

Mr. Faulkner: Your Honor, I asked him a simple question if he remembered the incident.

The Court: He is entitled to answer.

Mr. Faulkner: Well——

The Court: Just a moment. Read the question and the answer and allow him to conclude his answer.

Mr. Faulkner: Well, I submit, your Honor, where an answer is complete by the word "Yes" or "No," that anything from then on is voluntary. It is a matter of his memory. He either remembers or not with respect to the conversation.

The Court: I cannot anticipate what an answer may be. Until there is a record of evidence before the jury—when there is, you have an opportunity to ask the court to strike it out and instruct the jury to disregard it. I cannot anticipate what the answer will be. Read the question.

Mr. Faulkner: I move to strike out everything he said after the word "Yes."

The Court: Read the question and the answer.

(The record was read.) [899]

The Court: He had not concluded.

Mr. Pratt: I submit he should be allowed to finish.

(Testimony of Henry Lester Pineda.)

The Court: Is there anything further you wish to say?

The Witness: Yes. I said 1942, meaning 1941. Then when you called my attention to 1942 I said I meant 1941.

Mr. Faulkner: May I have the answer your Honor?

The Court: Read it.

(The record was read.)

The Court: All right.

Mr. Faulkner: By that answer do you mean that I called your attention to the fact that you said 1942?

A. After the recess when we came back, after they had wanted me to continue speaking about the incident in 1942, I said, "I am sorry if I said 1942, I meant 1941."

Q. Well, I was not asking you any questions, Mr. Pineda.

A. You were interrupting all the time.

Q. But I was not asking you any questions. In other words, you were following the interruptions, isn't that correct?

A. Well, I was trying to listen to Mr. Hippeli, but most of the time I had to listen to you.

Q. And you observed that someone said or indicated that 1942 was the wrong date.

A. It was 1942 when we moved the plant. Most of our time was taken up in moving.

Q. When did the incident that you referred to as the summer of 1942 actually occur?

(Testimony of Henry Lester Pineda.)

A. About 1941. [900]

Q. Was it in 1941?

A. As far as my knowledge, I would say yes.

Q. What part of 1941?

A. I would say either spring or summer, around that time.

Q. That would mean anywhere from March to September, is that right?

A. Around that, yes.

Q. Is that your best recollection of the time of that incident? A. Yes.

Q. A six-months period, is that right?

A. Yes.

Q. Spring or summer, that is a six-months period?

A. Yes. May I say something, your Honor, or do I have to answer?

The Court: You have to answer.

Mr. Faulkner: I object.

Q. Regardless of the time, tell me what Mr. Moncharsh said to you in that incident; what did Mr. Moncharsh, who sits here in court, say to you in connection with that inspection of eggs?

A. I don't think he said anything to me.

Q. What did he say in your presence?

A. By presence I mean he said something within my distance of hearing. I mean I don't remember him talking to me. He didn't know whether I was around, or not. He was on the bench there, he was at the end of the bench. I went over and took Ed's place on the bench.

(Testimony of Henry Lester Pineda.)

Q. What did he say within your hearing, rather than in your presence?

A. Well, he told Ed how to put up the case of eggs. [901] that certain—He said Colonel Foster—I don't remember who he said was coming to inspect it.

Q. What did he say?

A. I can't remember the exact words, but this conversation was about putting up a case of eggs.

Q. The cases of eggs?

A. The cases of eggs for the Army.

Q. Then they were cases of eggs for the Army, is that right?

A. As far as my knowledge, yes.

Q. He gave some direction to somebody there within the hearing of Mr. Moncharsh's voice in connection with putting up an order of eggs for the Army? A. Yes.

Q. What did he say?

A. As I remember, he said that they bought Grade A.

Q. Grade A? A. Yes.

Q. Then your best recollection is that this order that was involved in this incident was an order for Grade A eggs, is that right? A. Yes.

Q. Were there any eggs on the floor of Nye & Nissen at the time that Mr. Moncharsh was talking? A. Yes.

Q. When he was referring to fixing an order for the Army of Grade A eggs, did he refer to a particular quantity of eggs on the floor of that plant?

A. I don't know.

(Testimony of Henry Lester Pineda.)

Q. Then the conversation, whatever it may have been, was not, as far as you know, related to any eggs that were present at that plant, is that right?

A. That's right.

Q. Did the conversation relate to an order for eggs that was to [902] be—where some physical work was to be done then and there? A. Yes.

Q. After the conversation did you commence to work on some cases of eggs? A. Yes.

Q. Now, how long did you work on those eggs that day?

A. I worked on the cases of eggs that day about three or four hours. I went back to my own room and cleaned up my work.

Q. Cleaned up the breaking room work?

A. My work, yes.

Q. When you started to work on the eggs on that afternoon, before you started did anyone give you any directions to aid in that work?

A. Not in that order, no. I just helped take care of the work we had for the rest of the day there.

Q. Did you work on this order?

A. No. I took care of the girls that were putting out the city orders.

Q. The city orders? A. Yes.

Q. On that day you did no work personally in connection with the order that Mr. Moncharsh was talking about?

A. I don't recall if I did or not.

Q. Did you on the following day do any work

(Testimony of Henry Lester Pineda.)

on any eggs that were supposed to fill that Army order? A. Yes.

Q. So that it was not until the next day that you started to work on that order, is that right?

A. It might have been that same day, but I don't recall, but I am sure I did on the following day.

Q. The following day? A. Yes. [903]

Q. What type of eggs were you assembling or getting prepared for that order?

A. Large eggs.

Q. Pardon me? A. Large eggs.

The Court: Large eggs.

Mr. Faulkner: Q. What quality?

A. I don't know the quality.

Q. You don't know the quality? A. No.

Q. Do you know where the eggs came from?

A. No.

Q. Did they come into the plant of Nye & Nissen on a truck? A. I don't know.

Q. Did they come from Petaluma?

A. Well, I wouldn't say—they usually did, but I am not sure about that.

Q. How do you remember for a certainty that the day that Mr. Moncharsh talked in your presence that you commenced working on an Army order for eggs?

A. Because I was told I was going to help Ed help to put them up.

Q. Who told you that? A. Mr. Goddard.

Q. Did he tell you that it was Mr. Moncharsh that was talking?

(Testimony of Henry Lester Pineda.)

A. Yes, only he told me to go up on the bench. Then after they were through I went and cleaned up my room and he told me I would help Ed with the order.

Q. The next day you started to help Ed?

A. Yes.

Q. Ed Menges? A. Yes.

Q. Did you help him?

A. Yes, I helped him.

Q. How long did you help him?

A. I don't remember how long. [904]

Q. A day?

A. Well, it might have been two or three days, but maybe not the full time.

Q. What is your best recollection?

A. I don't remember.

Q. Was it week?

A. I still say I don't remember.

Q. Was it two weeks?

A. I don't remember.

Q. After you completed the work, regardless of the length of time, how many cases of eggs had you assembled for the Army?

A. That was not my business to know how many. When I came out of the room I was supposed to nail them up and make sure they went in the right pile.

Q. After the eggs came out of the candling room they were stacked——

A. They were put on these boards.

Q. On skids? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. How many skids of eggs were there?

A. I still say I don't know how many.

Q. Were there five? A. I don't know.

Q. Were there ten? A. I don't know.

Q. Were there fifty? A. I don't know.

Q. Now, Mr. Pineda, when you started to work to help Mr. Menges were these eggs candled?

A. Yes, they were candled once.

Q. Were they candled at a time when you were present and observed the girls were working in the candling room candling those eggs?

A. When I was helping him?

Q. Yes. A. Yes.

Q. Do you recall how many days it took the girls to candle [905] this order?

A. No. If I remembered how many days it took I could tell you how many days I helped him.

Q. Sometime in this incident you sent eggs into the candling room or shoved them into the candling room? A. Yes, I placed them on the bench.

Q. In the candling room. In that room there was space for about ten girls? A. Yes.

Q. At that point under the place where the light is there was an "X" marked on the outside of the candling room? A. Yes.

Q. It was in that aperture under the "X" that the cases to be candled were shoved in to the candler?

A. Right.

Q. You have seen girls candle eggs, have you not?

A. Yes.

Q. Did you see them candle this particular day?

(Testimony of Henry Lester Pineda.)

A. Yes.

Q. Were you inside the candling booth while they were candling?

A. At times I was inside. I have to go in at times.

Q. Why would you go in?

A. Well, there would be a lot of empty cases and they would need some cases to be brought in

Q. Into the candling room, when a case of eggs is shoved in to the lady who is candling the eggs, it is shoved directly under the light, is it?

A. It is placed out there, it is never shoved, but she has to pull it in.

Q. She pulls the case in? A. Yes.

Q. When the case is there it is on a bench?

A. Yes.

Q. Your bench is flush with the bench inside?

A. Yes.

Q. Is that correct? A. Yes. [906]

Q. To the right of the case of eggs that are being candled by a candler there is space for other cases, is there not? A. Yes.

Q. How many cases does the candler have on her right?

A. You see, I would say between this candler's right—well, about five cases of eggs. If I said so many cases on this girl's right, that means there are so many cases to the other girl's left. I still say two cases to her right. It all depends if it was two cases to her right there are three cases to the girl's

(Testimony of Henry Lester Pineda.)

left. I would say about five cases—it is a big room and the cases are all brought up.

Q. You have seen the girls work there many times? A. Yes.

Q. Other than this occasion? A. Yes.

Q. Each candler has a space for the box of eggs to be candled and she has two spaces for empty cases on her right, and a place for two or three cases on her left, isn't that right?

A. Yes, but I would say three cases on her left and her right, but the girl that is doing this on her left with full covers on her left——

Q. In other words, the girl on her right might be using one that was on the other girl's right?

A. Yes.

Q. On this particular order how many cases were in front of the girl candling the eggs?

A. Well, I would say there was one in front, the case to be candled. Then there would be a case to the right and a case to the left.

Q. There are also a few cases alongside of her?

A. How many [907] I don't remember.

Q. When the candling of those eggs commenced you observed it outside of the candling booth?

A. Yes.

Q. You were outside? A. Yes.

Q. The eggs to the right that came out from the candling booth on the right of that "X," what grade of eggs, what quality of eggs were they?

A. The ones on the right, that would be the—were the Grade A.

(Testimony of Henry Lester Pineda.)

Q. You then have a distinct recollection that in this transaction the eggs on the right of the candler were Grade A?

A. As far as I can remember, yes.

Q. Large? A. Yes.

Q. Now, what quality egg came out in the case on the left? A. What we call cut-outs.

Q. What was their quality?

A. Lower than Grade A.

Q. Lower than Grade A. A. Yes.

Q. But you don't know whether they were standards or trade or the equivalent, do you?

A. No.

Q. What is the equivalent for a standard egg in the lettering process of grading?

A. I don't know.

Q. Do you know what is the equivalent of a Trade egg when a letter process is used for grading eggs?

A. I don't know.

Q. Now, then, in this instance there was at least one case to the right of the candler and one or two to the left, and you have referred to the one to the left of the candler as a cutout. A. Yes. [908]

Q. Did you ever seen the purchase order from the Army for that order? A. No.

Q. In the event, Mr. Pineda, that the Army was getting that order of Standard eggs out of a quantity of eggs on the floor of Nye & Nissen, then the cases of eggs which were being candled that had a substantial part of Grade A eggs it would be the cases on the left that would go to the Army?

(Testimony of Henry Lester Pineda.)

A. Yes.

Q. Now, on this occasion, as I understand, you were taking eggs out of the right-hand side of the particular candler and the left——

A. Yes.

Q. You were handling four candlers, and Mr. Menges was handling four candlers?

A. That's right.

Q. All of the eggs that you took out from the right of the candler, where did you put them?

A. Put them on a tray, on a flat.

Q. Mr. Menges, likewise? A. Yes.

Q. Did you both put them on the same trays and build them up? A. Yes.

Q. On the first day when you had completed your work how many trays of eggs had you assembled that had come out of the right-hand side from the candler?

A. I don't recall.

Q. How many cases of eggs did you take out from the left-hand side of the candler?

A. That was not my business. That was Ed's business to check up how many cases the girls did every day. They used to hand out a slip that they made. [909]

Mr. Faulkner: I ask that that go out. The witness has no trouble on direct examination remembering, and I am entitled to similar answers.

The Court: Read the question and answer.

(Record read.)

The Court: The answer may stand.

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: Exception.

Q. Have you any recollection now as you sit there on this witness stand of the quantity of eggs that came out on the right-hand side of those candlers that were placed up on trays in connection with the Government order that you just testified to?

A. No.

Q. Have you any recollection of the number of cases of eggs that came out from the left-hand side of the candler? A. No.

Q. Have you any recollection of what the combined total—— A. No, I have not.

Q. (Continuing)——of the eggs were that were involved in that transaction? A. No.

Q. Have you any recollection of the proportion that the eggs that came out from the right-hand side of the candler were to the eggs that came out from the left-hand side of the candler? A. No.

Q. Have you any recollection of whether or not the quantity of eggs that came out from the right-hand side of the candler on this particular occasion exceeded in number those that came [910] out on the left? A. No.

Mr. Pratt: Your Honor, I object to this. He has asked that several times. He didn't know. He does not remember. It is the same question in a different form. I object to it as repetition.

Mr. Faulkner: He had no trouble remembering it on direct examination, and if Mr. Pratt wants me to read it to him I will read. On every one of these

(Testimony of Henry Lester Pineda.)

questions he had a definite memory on direct examination.

The Court: Read the question.

(The question was read by the reporter.)

The Court: The question is rather involved and compound, if I followed the witness' testimony. This question embodies a number of cases.

Mr. Faulkner: Your Honor, on direct examination the witness testified to the number of cases——

The Court: Q. Do you know the number of cases there?

A. There is one statement I gave, like when I was talking about Mr. Moncharsh saying, "Leave everything in the cutouts but the Black Rots," something like that. One order was 75, but he doesn't tell me which one he is referring to, so I am trying to do the best I can.

The Court: Reframe your question.

Mr. Faulkner: Q. Do you know what transaction I am talking about in the last 15 minutes?

A. I think I do, but I don't know whether I am hitting the same one as you are.

Q. Why do you have any difficulty in distinguishing the transaction which I described to you word for word the way you described it on your direct examination?

A. When I gave the statement there I said what Mr. Moncharsh was telling Ed he wanted done. In one order there he wanted certain eggs taken out; put up Grade A and the rest going into cutouts.

(Testimony of Henry Lester Pineda.)

Q. Isn't that the transaction you referred to on your direct examination as having occurred in the summer of 1942, and then you came back and said it occurred in 1941?

A. Is that the one you are talking about? [911]

Q. Isn't that the one you were talking about on your direct examination?

A. I believe it was.

Q. That is the one I am talking about.

A. I thought you just said no.

Q. I am talking about the same one you are talking about that you said occurred in 1942, in the summer, and then changed it to 1941 on your direct examination.

A. Yes, but here is the idea; I have heard Mr. Moncharsh give Ed hundreds of orders there, so I am trying to place as best I can—you seem to want everything exact from me, but a little while ago you asked those men what is the width of a case and they couldn't tell you the width of a case.

Mr. Faulkner: Your Honor, do I have to argue with the witness?

The Court: The difficulty is both of you are engaged in argument.

Mr. Faulkner: I admit I argued with him a moment ago, but I stopped.

The Court: Now we will proceed.

Mr. Faulkner: I am trying to follow the rule that your Honor enforced.

The Court: He is doing the best he can under the circumstances. Proceed now.

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: I think your Honor knows I am trying to do the best I can. [912]

Q. I want you to identify the transaction you have been testifying about concerning the eggs since we came into court a little after 2 o'clock in this respect: Is it the same transaction that you referred to on your direct examination which occurred in 1942 and you then changed and said it occurred in 1941? Would you answer that yes or no, please?

A. I believe I said it was about 75 cases.

Mr. Faulkner: I asked for an answer, your Honor. I asked a question and in order that there be no confusion of an incident, he has given us an answer that has no relation to it.

The Court: I will have the reporter read the question and you pay attention and answer it.

(Question read.)

The Court: Q. Do you understand that question?

A. No, I don't.

The Court: Reframe your question.

Mr. Faulkner: Q. You remember that you were called as a witness and asked a lot of questions by Mr. Hippeli, also I think by one of the other counsel—at all events, by Mr. Hippeli. You remember that, don't you?

A. Yes, I remember being asked questions by Mr. Hippeli.

Q. And you remember that you selected an occasion in the summer of 1942 where something

(Testimony of Henry Lester Pineda.)

happened with respect to a quantity of eggs. Do you remember that? A. Yes.

Q. And then after a recess you came back and said that that [913] incident related to the year 1941. Do you remember that? A. Yes.

Q. Now, do your remember that incident as you sit there now as a witness? A. Yes.

Q. Is that the incident you have been testifying about this afternoon? A. Yes.

Q. It is the same incident. Now I will ask you again if you remember the number of cases involved in that incident. Yes or no, please?

A. No.

Q. You do not remember it. Do you remember the proportion that the cases that came out on the right hand side of the candler bore to the cases that came out on the left hand side of the candler?

A. Around 40 per cent.

Q. What? A. Around 40 per cent.

Q. When did you remember that?

A. I am trying to put everything together here.

Q. So now you remember there was a proportion between the eggs coming out on the left hand side and those on the right hand side, is that right?

A. There always is.

Q. Pardon me?

A. There always is a proportion.

Q. And you remember it now? A. Yes.

Q. And it is 40 per cent?

A. Around 40 per cent, because that is the way most of our orders ran.

(Testimony of Henry Lester Pineda.)

Q. Do you remember on this occasion it was 40 per cent? A. Around 30, yes. [911]

Q. A little while ago you did not remember the percent, did you?

A. Well, I didn't know what you were talking about.

Q. That is your explanation of why you did not remember the proportion because you did not know what I was talking about, is that right?

Mr. Pratt: I object to that question as argumentative.

The Court: The objection will be sustained.

Mr. Faulkner: Q. In order for you to fix the percentage at 40 per cent coming out on the right hand side, and then 60 per cent came out on the right hand side, or vice versa—which was it?

Mr. Hippeli: I object to that, your Honor. Let us let the record speak for itself. He is changing the percentages.

Mr. Faulkner: He is changing his testimony.

Mr. Hippeli: He has not changed it. He has been consistent throughout. You just switched the percentages.

Mr. Faulkner: Q. Which is it? Is the 40 per cent on the right hand side or the left hand side of the candler?

A. The good eggs would be the loss.

Q. Would be the what?

A. The good eggs would be the 40 per cent.

Q. The 40 per cent represented the right-hand side of the candler, is that right?

(Testimony of Henry Lester Pineda.)

A. The candler; yes.

Q. Is that your testimony? A. Yes.

Q. Then those that came out from the candler's left were 60 per cent, is that correct?

A. Yes, that is right. [915]

Q. How many cases came out?

A. I don't know.

Q. How do you fix the proportion?

A. Well, if the girl keeps shoving out a case of eggs—say, she shoves out two cases and we get too many—about four, six of the others—you can tell just about what the proportion is but you can't tell how many eggs she is working. Now, as soon as they start shoving out too many at a time, those girls are stopped. They are told about it. They don't wait until the order is put up because it is too late.

Q. You memory has come back to you that there was a proportion between the eggs on the right and the eggs on the left?

A. There is always a proportion to it.

Q. Does your memory come back to you on how many cases were involved in that transaction?

A. No, I don't remember.

Q. You do not remember that. After you had assembled the good eggs, the 40 per cent eggs, were there assembled on the floor of Nye & Nissen 10 cases of eggs that formed part of the 40 per cent?

A. If I knew how many I would know how many cases we worked.

Q. Do you know how many cases came out on

(Testimony of Henry Lester Pineda.)

the right-hand side of the candler in connection with that order?

Mr. Hippeli: I object to that as having been asked and answered many times.

Mr. Faulkner: That is correct, and many of the answers are different than the others. [916]

The Court: You may answer. Did you hear the question?

The Witness: Yes. I believe it was around 75 but I am not so sure.

Mr. Faulkner: Q. Were there about 200 cases of eggs involved in this order?

A. I don't remember.

Q. Will you tell me what happened to those eggs in your presence that came out on the right-hand side of the candlers which you now say were about 75 in number after they left the candling booth? What happened to them?

A. We set them up on top of what we call the cut-out.

Q. Explain how you did that, please.

A. Well, the cut-outs are so many cases of cut-outs—we have loaded in the grade of eggs we were putting up for the order, and then you usually put around over six—always more than six on a flat—and then we get some of those cases of eggs and we put some of these good cases of eggs in the butter room and some outside on the back porch.

Q. What did you do on this particular occasion with the 75 cases of eggs which formed the better quality of eggs that had been candled?

(Testimony of Henry Lester Pineda.)

A. What I did—I didn't handle all the 75, but what I did and what I handled, I put some in the butter room and some on the porch.

Q. How many did you put in the butter room?

A. Put about four, I think it was.

Q. Four? A. Around four. [917]

Q. How many did you put on the porch?

A. Four.

Q. That is eight. What did you do with the other sixty-seven?

A. Well, they are taken up toward the working bench there and Ruby usually took care of them.

Q. What did he do in your presence with respect to those eggs?

A. I saw him once top the cases with eggs, top the flat.

Q. Top what flat? A. The flat of cut-outs.

Q. Sixty per cent of your eggs were cut-outs, is that right? A. That is right.

Q. How many cases of eggs do you pack on a flat?

A. Thirty—not all the time but most of the time—from twenty-four to thirty.

Q. On this particular occasion how many cases of eggs were of what you call the cut-out eggs stacked on a flat?

A. Most of them were twenty-four, but some eighteen.

Q. Some eighteen?

A. Most of them twenty-four.

Q. How many were twenty-four?

(Testimony of Henry Lester Piñeda.)

A. I don't remember.

Q. Were there three?

A. I don't remember.

Q. Four? A. I don't remember.

Q. Five? A. I don't remember.

Q. Were there ten? A. I don't recall.

Q. There would be about a hundred and twelve cases of cut-outs stacked on flats, isn't that correct?

A. Here is the way it is.

Q. Is that correct?

A. Maybe the way you figure it, but the [918] way I figure it, it doesn't have to be that much.

Q. You have to have 75 cases of eggs representing 40 per cent of the entire lot, don't you?

A. Maybe he wanted 75—maybe he wanted 75 samples of a certain amount of cases. Might have to work more cases to get them out. I would say 40 per cent, but that doesn't mean it was 40 per cent.

Q. Why do you say 40 per cent?

A. That is the way we more or less work it all the time. If it took too long to put up a sample, that means the girls would take too long to do it and then they would get a better grade.

Q. Mr. Pineda, do you characterize 75 cases of eggs out of an order of 200 as sample eggs?

A. Sometimes yes. It all depends if he wants to get all the sample cases at one time, but that doesn't mean it is going to be all used on that order at one time. It can be placed on the floor and used again.

(Testimony of Henry Lester Pineda.)

Q. If the order was for 200 cases of eggs, would you call 75 cases of eggs sample cases from your experience on that day?

A. They wouldn't give them that many cases of eggs and call them samples, but they could get those cases out and use them as samples. But they wouldn't use all of them then. If you are going to do that, you might as well put up all the samples you can instead of sending them off for candling to someone else.

Q. On this particular day you had 75 cases of eggs that came out on the right-hand side. How many of those cases of eggs were used to top the cut-out cases? A. I don't know how many.

Q. Ten?

A. I didn't do all that work so I wouldn't know how many.

Q. Did you see it done?

A. A few cases, yes.

Q. How many cases did you see out of the 75 that were put on cases that contained cut-out eggs?

A. I saw about three flats.

Q. Three flats? A. Yes.

Q. So that of all the eggs, the cut-outs, the only cases that you saw mingled with the cut-outs were three cases that came out on the hight-hand side, is that right. A. Three flats, not three cases.

Q. What? A. Three flats, not three cases.

Q. Three flats?

A. Three flats. I saw them top them off and put some on the side there.

(Testimony of Henry Lester Pineda.)

Q. How many cases of the higher grade egg did you see taken over wherever they were taken to and put on the cases of cut-out eggs?

A. About twenty, I guess.

Q. You saw twenty?

A. Eighteen or twenty.

Q. What happened to the remaining part of those eggs?

A. When we trucked them out to the end of the bench there, Mr. Goddard comes along and tells us what he wants to do.

Q. What did he do on this occasion?

A. I just told you. He topped them off. To my knowledge, I just saw him top of about three flats.

Q. You have 75 cases of eggs. You put four in a freezer, four on a porch, and you see them take 21 cases or 18 cases to top [920] the cut-outs?

A. Yes.

Q. What does he do with the balance of those eggs?

A. When we finish up a case of eggs he takes them out. We don't accumulate the whole seventy-five at one place there. He takes up the flat, candles it; he takes off the cutouts; we take out the cutouts; he fixes them the way he wants to have them.

Q. You say all those——

A. Not all of them.

Q. What part did you see him do? What part did you see him do in respect to the handling of the cutouts? A. About twenty cases.

Q. You saw those twenty cases——

A. Yes.

(Testimony of Henry Lester Pineda.)

Q. Of eggs that were on top mingled with a larger quantity of eggs that you called the cutouts?

A. That is right.

Q. Now, he put those on top of the flats, is that right?

A. We don't always put them on top. Most of the time on top, and then the front of the flat that is going to face the inspector. There is where we place some. He isn't going to pick all of them out of the top. He is bound to pick some on the front.

Q. You testified on your direct examination, did you not, that what was done on that occasion was that the cutout eggs were stacked up 24 on a tray or on a flat, and that you then took six cases of the higher grade eggs and put them on the top of the cutouts, did you not?

A. Yes, but we not only do that——

Q. I am asking you if you testified to that on your direct [921] examination?

A. Yes, we have done that.

Q. Is that correct? A. Yes.

Q. That is correct?

A. But we don't do that to every flat.

Q. On this particular occasion is that what you did?

A. Yes, but not to every flat of cases of eggs.

Q. Then you changed the procedure on this occation, is that right?

A. No, they always did it the same way, because the inspector isn't going around and taking the top eggs of any flat. They take a certain amount and

(Testimony of Henry Lester Pineda.)

make it easier for us to get the cases that much sooner, but they are bound to pick some from the bottom or the side. It is up to Ruby to figure out more or less where he is going to pick them.

Q. Mr. Pineda, on your direct examination you never at any time mentioned the placing of any higher quality of eggs on a tray of eggs other than on the top, did you?

A. Maybe I didn't, but that is the way we worked.

Q. Then these eggs that are of higher quality were interspersed with eggs which you have referred to as cutouts on the trays, is that right?

A. Yes.

Q. On that particular occasion?

A. Yes sir.

Q. Is that correct? A. Yes sir.

Q. Now, they took, then, about 20 of those cases of eggs that were the higher quality and distributed them in that form, am I correct in that?

A. They took more, but I saw them do 20.

Q. You saw them do 20?

A. About twenty. [922]

Q. You do not know what they did when you didn't see them, do you? A. No.

Q. All you saw was 20? A. Yes.

Q. When they took the 20 cases of eggs that were the higher quality of eggs, according to your testimony, those that came out on the eight, and did this restacking of eggs, how many trays of eggs were

(Testimony of Henry Lester Pineda.)

they restacking at the time you saw them use 20 cases?

A. I took three flats up there and they started working on those three flats. Now, whether he put more cases on the flat, some more on the side, he knows what he is going to do, and I don't know. I know there is about three flats of eggs, about three of them.

Q. That is about ninety cases?

A. Well, yes, I would say ninety.

Q. Ninety? Is that right?

A. To my recollection I believe it was. It might have been 24, but I believe it was 90.

Q. After you had rebuilt it there would be 30 on a flat, is that right?

A. Not necessarily. Most of the time it was 30, but it all depended on how much room he had, Mr. Goddard had.

Q. On the occasion that you testified to, the particular occasion that you remembered——

A. I would say about 30.

Q. About thirty; so that there were, so far as you observed, about ninety cases of eggs that were made up of 70 cases of cutouts and 20 cases of higher grade eggs, is that right? [923]

A. That is right.

Q. And the 20 cases of higher grade eggs were interspersed in the setup on those trays, is that correct? A. That is right.

Q. Was that the last thing that you saw done with those three trays of eggs?

(Testimony of Henry Lester Pineda.)

A. No, he took them up and put them in the aisles where he was going to place them.

Q. Then they were moved into a position, were they not? A. Yes.

Q. With other eggs, is that correct?

A. What do you mean with other eggs? We have eggs all over the plant there.

Q. That is right, but these 90 cases of eggs, when you saw them the next time, were somewhere in the plant of Nye & Nissen in a group with other eggs, were they not? A. Yes, that is right.

Q. And the additional eggs caused the amount to be around two to three hundred cases, didn't it?

A. I don't recall.

Q. Would it be 200?

A. I don't remember what it was.

Q. Was it more than ninety that you saw, those 20 cases you put up? A. Oh yes.

Q. After you had seen that done in your presence did you observe anything else in connection with those particular eggs? A. No.

Q. That is the last incident that you are familiar with in relation to those eggs, is that correct?

A. No, I helped the inspector.

Q. When? A. When he came in.

Q. When did he come in?

A. I don't recall. [924]

Q. A week later? A. No.

Q. A day later?

A. Well when he had the order done he usually calls up the inspector.

(Testimony of Henry Lester Pineda.)

Q. Not what he usually did; what did he do on this occasion?

A. I didn't hear him call him up.

Q. Have you ever heard Mr. Goddard talk to an inspector in your life?

A. Talk to an inspector? Yes.

Q. On the telephone?

A. No, not on the phone. He goes into his office——

Q. Just a moment. You testified at least twenty-five times on your direct examination that Mr. Goddard phoned someone for an inspection.

A. Yes.

Q. Did you ever hear him telephone anyone?

A. No. When he goes to his office I just walk away. It isn't right for a man to go in an office and listen to a man talk on the telephone.

Q. You merely assume Mr. Goddard was the one who telephoned, is that right?

A. If a man says, "I am going to call the inspector," and goes to use the phone, naturally you say he is phoning the inspector.

Q. Mr. Goddard was there all day long, wasn't he? A. Yes.

Q. He was in and out of his office all day long?

A. That is right.

Q. On no occasion were you present in his office when he used the telephone to request an inspector to come to that plant, were you?

A. Not that I can recall, no. [925]

Q. When the inspector came, Colonel Foster,

(Testimony of Henry Lester Pineda.)

he came there with some other men, did he not, on that particular occasion? A. Yes.

Q. Now, I would like you to describe to the Jury how you picked out the samples from those particular eggs or aided Colonel Foster to pick them out?

A. Colonel Foster would get a brush and dab each case he wanted taken out.

Q. How did he select those cases?

A. He just went around to different flats we had and dabbed them.

Q. What did you do to assist them in selecting the cases? A. Nothing.

Q. You did nothing?

A. The ones he wanted out I helped take them out, Mr. Goddard and I.

Q. What was that?

A. Mr. Goddard and I would help him take out the cases of eggs he wanted.

Q. After Colonel Foster had dabbed the end of the case or some part of the case with a brush, you would take the case down from the pile?

A. That is right.

Q. Did you select the particular cases of eggs for him to dab?

A. No, but if he was picking too many samples —I mean usually Goddard would say, "Make it easy for the boys, they had a hard day's work," or so.

Q. You had just finished assembling those cases so that some of the better eggs would be on the bot-

(Testimony of Henry Lester Pineda.)

tom, some on the top and some in the middle, is that right?

A. Not exactly on the bottom. Some would be facing the inspector, in the front; [920] sometimes we would put about, oh, I would say, quite a few—instead of maybe six cases on a flat we would put all the sample cases we had left over, we would try and put them right in front, because that is usually where the inspector would take most of the samples from the front of the little aisles we had.

Q. Mr. Pineda, it is as simple to turn a flat of eggs in that plant as it is for me to turn that one-pound weight, isn't it? A. No, it is not.

Q. On this particular occasion in your presence Mr. Goddard told Colonel Foster, "Don't make it too hard on the boys," isn't that right?

A. Yes, he said that quite a few times.

Q. Is it not correct that the eggs stacked 30 on a flat, that you can take any case of eggs off that flat without breaking the flat down, except two, isn't that right? Isn't that correct?

A. You mean I can take any case off a flat?

Q. You can pick out a case of eggs stacked 30 high on the flat anywhere in the sequence of the eggs without breaking the flat down, unless you pick out two cases? Two cases you have to break the flat down? A. Yes, that is right.

Q. So there are 20 cases of eggs stacked 30 high and you can take any one off of that flat without breaking the flat? A. Yes.

The Court: Q. What do you mean by that?

(Testimony of Henry Lester Pineda.)

A. The cases of eggs, they pile one this way and two the opposite way, and then the crisscross. If you want to take one in the middle, you move them around this way and turn them so the [927] two top ones are holding the bottom ones and form like a wall there—I don't know how to explain it. They overlap each other, and when you turn them around you get them to overlap so you can pull out the bottom ones. We used to pile the trays close together there. A man couldn't do it so good that way. We usually took them off the top. We didn't always work that way.

Q. On this particular occasion, Mr. Pineda—we are talking about one occasion, Mr. Pineda—Colonel Foster put his mark on some cases of eggs. Do you remember how many? A. No, I don't.

Q. Were there five?

A. No, he had quite a few of them.

Q. Fifteen? A. Oh, about that, I guess.

Q. How many men did he have with him on this occasion?

A. I don't recall. I would say at least two.

Q. When he was dabbing that brush of his against the end of the case what were the other two men doing? A. Nothing, just standing there.

Q. Just standing there? A. That is right.

Q. Then you and Mr. Goddard would help take those cases out of the flats, is that right?

A. We would take them off these flats and dump them four or five—usually four.

(Testimony of Henry Lester Pineda.)

Q. What did you do with those flats that he had indicated with his stencil brush?

A. Left them there.

Q. What then did Colonel Foster do?

A. He went into the [928] candling room with his men.

Q. Did both men go in with him? A. Yes.

Q. So that he had three men in the candling room, is that right? A. That is right.

Q. In that candling room it is true, is it not, that it had along the face of the whole length of it an air vent that came down the whole length, isn't that correct? A. Yes, that is right.

Q. That was usually down, was it not?

A. No, it was not.

Q. Wasn't it usually down and the girls used it as a shelf?

A. No. We used it as a shelf.

Q. What?

A. The fellows on the outside used it as a shelf when it was down.

Q. Somebody used it as a shelf?

A. Yes, but the girls didn't always like that down. It gets kinda drafty. But on a very hot day they would ask for that to be placed down.

Q. On this particular occasion the three Army men, the Colonel and the other two men, all went into the candling booth and candled those eggs, is that right? A. That is right.

Q. And then no Army man was left on the floor of the premises, is that your testimony?

(Testimony of Henry Lester Pineda.)

A. That is right.

Q. Did you ever see what the three men were doing in there?

A. Usually there was only Colonel Hand.

Q. Did you see the three men?

A. The three men? No, I could see what the fellow who was candling the eggs was doing. [929]

Q. Could you see what the other two men were doing?

A. Not necessarily, no, I never did look for them.

Q. On this occasion there were a number of cases of eggs that were selected in the manner that you have indicated and the Colonel then with the two men went into the candling room. What then was done with the cases of eggs by you or in your presence?

A. We put the cases of eggs I knew to be samples on the bench, and the ones I knew were not samples, some I ran into the butter room and some I ran to the porch.

The Court: We will take a recess.

(Recess.) [930]

The Court: You may proceed.

Mr. Faulkner: Q. Colonel Hand is in the candling room and there are these selected cases on the outside of the candling room that have been brought over near the bench, is that right?

A. Colonel Foster.

Q. Colonel Foster, rather.

Q. What did you personally do with any of those cases?

(Testimony of Henry Lester Pineda.)

A. I exchanged cases that were not samples and I placed sample cases in their places and put some on the bench.

Mr. Faulkner: May I have the answer read?

The Court: Read it.

(The answer was read by the reporter.)

Mr. Faulkner: Q. In other words, some of the cases that the Colonel marked, Colonel Foster, were cases which you referred to as sample cases?

A. Yes.

Q. Some of the cases that he marked were some that you referred to as cutouts, is that right?

A. Yes.

Q. Now, at that time you were anxious that the cut-outs wouldn't go in there for the Colonel to sample, isn't that right? A. That's right.

Q. You then at that time took the cases that were cut-outs and that went in some other so-called sample cases? A. Yes.

Q. Where were they?

A. In the butter room and in the back porch.

Q. There were four in the butter room and four in the back [931] porch, is that right?

A. I said four. I don't know whether either four or eight. We usually kept about eight in the butter room and four in the back porch, or vice versa. We usually kept about twelve back there.

Q. How many cut-outs on this particular occasion the Colonel is there in the candling room with his two assistants and while you are on the other

(Testimony of Henry Lester Pineda.)

side out in the corridor, how many cut-out cases did he pick out on that day?

A. I don't remember.

Q. Around five? A. I don't recall.

Q. I would like you to put a mark on this piece of paper of any marks that you put on any cases of eggs on the occasion of the order that Colonel Foster came to inspect on the occasion that you have been testifying about.

A. A mark on any case?

Q. Any mark that you put on any case of eggs. May I see the mark?

A. It would be like that, of course, but it——

Q. Well, make it just as closely——

A. Close to it.

Q. Close to the mark as you can, and when you have prepared it the way you think it most nearly resembles what you put on that case of eggs on that occasion——

(The witness indicates on a piece of paper.)

Q. All right. This one is the first one you made.

A. I made it first. I thought maybe you wanted to show it, so I made it bigger.

Q. This one right here, is that a mark that you put on a case [932] of eggs on that particular occasion?

A. Yes. That is not counting the full covers we had on top.

Q. I am speaking about marks. A. O.K.

Mr. Faulkner: I offer it in evidence, then.

The Court: It may be admitted and marked.

(Testimony of Henry Lester Pineda.)

(The sketch was marked Defendants' Exhibit L, in evidence.)

Mr. Faulkner: I would like you to put on this sheet of paper any other mark that you put on any case of eggs on the occasion—will you take and place a pencil mark—on this occasion, on the occasion when Colonel Foster was there, that we have been referring to, and on other occasions when eggs were inspected by an Army inspector in your presence, I would like you to put any other mark that you ever put on any cases of eggs that were ever inspected by an Army inspector in your presence, other than the one you have just marked.

(The witness indicates on paper.)

Is that the only other mark that you have made, that you ever put on?

A. As far as I can remember, yes.

Q. So that the mark which is Defendants' Exhibit L—I ask this be marked Defendants' Exhibit M in evidence; I offer it in evidence.

The Court: Admitted.

(The sketch was marked Defendants' Exhibit M in evidence.) [933]

Mr. Faulkner: Q. On this occasion when Colonel Foster was there did you have any occasion to mark any cases with the mark that you referred to here as Defendants' Exhibit M? A. Yes.

Q. So that the occasion that we are talking about, some cases had the zero and some cases had the mark that is similar to Defendants' Exhibit M?

A. Yes, some——

(Testimony of Henry Lester Pineda.)

Q. Is that correct? A. Yes.

Q. So that on that occasion you used personally both marks? A. Yes.

Q. When did you use the mark with the circle in connection with the order of eggs that Colonel Foster inspected?

A. I just used that for my own convenience.

Q. I say when did you use it?

A. When it came out of the candling room.

Q. When it came out of the candling room?

A. Yes.

Q. Did you mark every case that came out of the candling room with the zero, that came out on the right-hand side of the candler?

A. Not all of them. Some were zero and some just a little line across the corner of the case.

Q. So you used the same marking, rather you used two similar marks on the cases that came out at the right-hand side of the candler? A. Yes.

Q. And the two marks were similar to those which you have shown here, is that right?

A. Yes. [934]

Q. Exhibit M? A. Yes.

Q. And Exhibit L. Were those marks of about the size that is indicated here?

A. Yes, about that size.

Q. Were those cases new cases in this particular order?

A. Yes, I believe they were.

Q. Did they have any labels on them?

(Testimony of Henry Lester Pineda.)

A. I recall, at least I recall there were blue labels.

Q. The boxes in which the candlers were candling the eggs into had a blue label, is that correct?

A. Yes.

Q. On both sides? A. Yes.

Q. What does a blue label stand for?

A. Large eggs.

Q. What? A. Large eggs, a higher grade.

Q. What did you understand the blue label represented in this particular occasion?

A. Well, the cut-outs and the Grade A's came out and I nailed tops——

Q. But I am talking about the labels. What did you understand a blue label to represent, a large egg of a good quality? A. Yes.

Q. What quality?

A. Well, large Grade A and better.

Q. Grade AA, would that have a blue——

A. Yes.

Q. There isn't any question that you marked Grade AA, or A, or Cutout eggs on that occasion, is that right?

A. What do you mean, "there isn't any question"?

Q. I mean on this occasion there was no question but the eggs that were being candled or graded were AA or a Cut-out, a [935] grade lower than an A?

A. Yes.

Q. Did any of the cases bear any mark grade A mark at any time?

(Testimony of Henry Lester Pineda.)

A. Yes, we had a stamp that we used, "Large Grade A" on it.

Q. So that the particular samples that were involved in this transaction in addition to having a blue label had the words "Grade A"?

A. Yes, that's right.

Q. That was irrespective of whether they came out of the right-hand side or came out of the left-hand side? A. That is right.

Q. Is that correct? A. Yes.

Q. These so-called cut-outs which you have referred to that came out the left-hand side, none of those cases were ever marked by you on that occasion? A. No.

Q. Is that right? A. That is right.

Q. And all of them on the right were?

A. Yes.

Q. So that when the colonel had dabbed his brush you then would look for one of those marks, would you?

A. I wouldn't have to necessarily look—the reason I placed those marks there, it would be easier for me to pick them out at a glance, but still when you are working there you are bound at times to make a mistake, put the wrong case here or the wrong case there, so far my own convenience I used one of those marks on each case of eggs, so I wouldn't get bawled out in case something happened.

Q. Do you recall in connection with taking that lot that was [936] originally candled, putting it on the flat, or from the flat, after the inspection?

(Testimony of Henry Lester Pineda.)

A. When they came out of the candling room, do you mean?

Q. When you were taking eggs out of the candling room where the Nye & Nissen women were candling them and you moved them over to the flat you marked them for your own convenience?

A. Yes.

Q. So you would not be bawled out for putting the eggs in the wrong place?

A. Yes, that is one reason, to make it easier to pick them out, so I wouldn't have to look at the top of the case.

Q. Where would you place that mark?

A. Right in the corner, where we call it the cleat.

Q. There was a cleat on each end of it?

A. The two ends.

Q. In other words, you would put two marks?

A. Yes, one on each side of the case.

Q. So when Colonel Hand came there he observed a quantity of eggs where although all of the labels were alike, a small percentage had pencil marks on the cleat, is that right?

A. Which Colonel did you say?

Q. Colonel Foster. A. Yes.

Q. That is correct? A. Yes.

Q. It is a fact, it is not that any competent Army inspector, the first thing he does is examine the outside of the case to see whether they are all similar, isn't that correct? Is that [937] correct?

A. I don't know what they do.

Q. All right, you don't know. And Colonel Fos-

(Testimony of Henry Lester Pineda.)

ter put the ink dab on there with his brush, all of those that didn't have that mark on you took away, is that right? Rather, that didn't have a pencil mark on similar to Exhibits L and M?

A. No, not necessarily. That wasn't—the mark he made that didn't have a full cover would be the ones that didn't have the cut-outs. That mark on the side was my own. That was not the orders that we got.

Q. I understood you to say, Mr. Pineda, that every case of eggs that came out of the right-hand side of the candling booth when the women in Nyg & Nissen were candling the eggs, all those that came out the right-hand side had a mark placed on them by you similar to Defendants' Exhibit M and Defendants' Exhibit L, and that you placed that mark on the cleats at both ends?

A. Yes, but I didn't handle the whole eight lights. I just had about four lights, or five, sometimes three.

Q. And didn't Mr. Menges put the same mark on?

A. I don't know if he did, or not. We used to try to agree to do it, that was for my own convenience.

Q. Did he tell you what mark to put on, or did you tell him?

A. No. I don't remember. He would ask me questions, you know.

Q. On this occasion?

A. I don't recall whether he put it on, or not.

(Testimony of Henry Lester Pineda.)

We used to try to co-operate, that was my idea. Sometimes he would want to do it one way and we would do it his way. [938]

Q. On this occasion, do you remember whether you requested Mr. Menges to put this mark on, or whether he requested you?

A. He didn't request me.

Q. He didn't?

A. I don't know if I told him what I was doing. I usually told him everything.

Q. Did you see him place a mark on these particular eggs? A. That I don't know.

Q. You don't know? A. No.

Q. The marking was always done as the eggs came out of the candler's room, was it not?

A. By me, yes.

Q. Now, you mentioned that the boxes of eggs also were dissimilar in another respect, something about the covers. A. Yes.

Q. Who did the covering of the cases?

A. I did, and Mr. Menges, and sometimes Mr. Goddard.

Q. When you brought a case of eggs out from a lady who was candling and you had that marked, a zero on that, dabbed like that, and you put a cover on that case, what kind of a cover would you put on? A. Full cover.

Q. When on the other hand you got a case of eggs that came out the left-hand side you neither marked the case but you put a different type of cover on? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. What kind of a cover was that?

A. Well, it is something like a full cover but slit in the middle, it has two pieces.

Q. In other words, it would be as though the full cover [939] would cover the top of the egg case in its entirety? A. Yes.

Q. A split cover would have two pieces of wood that covered the same space? A. Yes.

Q. That was put on what you call the cut-outs?

A. Yes.

Q. When were the boxes labeled, Mr. Pineda?

A. Some were already labeled, and some we labeled ourselves.

Q. Did you label any of the boxes on the particular order?

A. I don't remember if I did, or not. Before you put up an order, we always would get the necessary cases and usually they have the girls come out and label cases.

Q. At any time during that particular period when these particular eggs were being candled by the girls, did the girls put any marks on any of the cases on any piece of paper to indicate the quality of eggs?

A. Yes; once in a while they would cut out the case of eggs so we would not get the wrong place, but they didn't do it very often.

Q. On this occasion some of these cases came out with a written card by the woman candler?

A. No.

Q. It was always cut-outs?